

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

DEC 12 1994

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)
)
Provision of Access for) **RM-8535**
900 Number Service)

REPLY COMMENTS OF TELESERVICES INDUSTRY ASSOCIATION

The Teleservices Industry Association ("TIA"), by its attorneys and pursuant to Section 1.405(b) of the Commission's rules, hereby submits this reply to the comments filed in the above-captioned docket.

I. INTRODUCTION

The comments generally reflect support for TIA's Petition for Rulemaking which proposed that the Commission adopt rules requiring 900 number portability.^{1/} Although some disagreement exists concerning the sufficiency of demand for 900 service and the actual costs of implementing 900 number portability, no party seriously challenges TIA's most fundamental contentions: (i) that the lack of number portability has stifled competition among interexchange

^{1/} The Interactive Services Association, MCI Telecommunications Corporation ("MCI"), Network Telephone Services, Inc., Sprint Corporation, and the Weather Channel support TIA's Petition; Ameritech, Pacific Bell, and U.S. West, while apparently neutral with respect to the Petition, support the concept of portability generally; BellSouth and Southwestern Bell oppose the Petition.

carriers in the pay-per-call marketplace,^{2/} and (ii) that number portability would provide numerous benefits for the 900 marketplace.^{3/} Thus, while the issues raised by commenters certainly warrant discussion (this is precisely the reason for a rulemaking proceeding), the most compelling reasons for instituting 900 portability remain largely undisputed.

II. DISCUSSION

A. Portability Is Likely To Lead To Increased Demand For 900 Service.

A few local exchange carriers ("LECs") have asserted that demand has been shrinking in the 900 market over the past several years, and that demand presently may be too low to support portability.^{4/} Market demand in the 900 industry has grown along a variable course; but while demand may have declined somewhat recently due to regulatory forces and a host of other factors, this decline supports the adoption of rules and policies that require 900 portability -- not the converse, as some parties claim. Indeed, the relative lack of competition among interexchange carriers in the provision of 900 service (largely due to the lack

^{2/} But see MCI at 1-2 (challenging TIA's assertion that the 900 market is not competitive, but failing to support its position with any data).

^{3/} While some parties argue that the 900 market may be unable to support the costs of portability, this argument is analytically different from denying that portability would benefit the market should the market be capable of supporting it. See infra discussion of 900 demand.

^{4/} See BellSouth at 2-3; Southwestern Bell at 2; U.S. West at 9.

of number portability) is one of the factors responsible for reduced demand because it leads to artificially inflated transport rates.

Portability is likely to stimulate market demand for 900 information services because the increased competition that accompanies portability should reduce transport rates and result in more service and feature options to 900 number subscribers.^{5/} This, in turn, should result in the introduction of new, low-cost 900 number services to consumers. For example, while a 30¢ per minute transport rate may represent a small percentage of the cost of providing a psychic or astrology service priced at \$3.99 per minute, such a rate can make it impossible for companies to offer profitably certain news, sports or other services in the 50¢ to 75¢ range.^{6/} Assuming that customers are more likely to use information services when per-minute charges are more reasonable, lower rates should lead to increased consumer demand.

A more attractive 900 market also may stem subscriber migration away from 900 service to international calls or 10XXX dialing patterns.^{7/} Given the Commission's desire to have all pay-per-call business conducted via a 900 service access code, this

^{5/} See TIA Petition at 11-15.

^{6/} See Network Telephone Services at 2 n.2.

^{7/} See BellSouth at 3 n.2; Southwestern Bell at 2.

clearly should be a positive byproduct of portability from the Commission's perspective.^{8/}

B. A Properly Documented Cost/Benefit Analysis Is Required To Determine The Feasibility of 900 Portability.

In its Petition, TIA expressed its belief that software modifications would represent the most significant expense of implementing 900 portability.^{9/} While acknowledging that software would account for much of the cost of implementing 900 number portability, several parties disagree with TIA's belief that this cost should be relatively minor.^{10/}

TIA does not have the data necessary to analyze thoroughly the cost of implementing 900 portability. Not surprisingly, the parties who objected to TIA's analysis failed to provide data to support their contentions that the costs of implementation would be high.^{11/} This is precisely why a rulemaking is warranted. The Commission has stated that "the primary purpose of rulemaking procedures should be to enhance the agency's knowledge of the subject matter of the proposed rules and to afford the public an adequate opportunity to provide data, views and arguments with

^{8/} See In re Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, 75 R.R. 2d 1247, 1251-52 (1994).

^{9/} TIA Petition at 17.

^{10/} See e.g., BellSouth at 3; Southwestern Bell at 2; U.S. West at 2.

^{11/} Indeed, only one commenter even attempted to quantify the costs of making 900 numbers portable. See Ameritech at 1.

respect to the agency's proposals and any alternative proposals."^{12/}

It is noteworthy that the scant amount of tangible data already on the record seems to indicate that the costs of implementing 900 portability are neither excessive nor unjustifiable, as some have alleged. For example, Ameritech estimates the hardware and software costs required to create the architecture for 900 number portability to be between \$66 million and \$102 million.^{13/} Using figures from two other parties,^{14/} a conservative estimate of nationwide 900 usage is 302 million

^{12/} In re Policies and Procedures Regarding Ex Parte Communications During Informal Rulemaking Proceedings, 68 FCC 2d 804, 806 (1978); see also In re Policies and Procedures Regarding Ex Parte Communications During Informal Rulemaking Proceedings, 78 FCC 2d 1384, 1412 (1980) ("The purpose of a rule making is to establish sound public policy in the broad public interest, and in such an effort the paramount need is not fairness, but wisdom.") (dissenting statement by Commissioner Jones, in which Commissioner Washburn joined).

^{13/} Ameritech estimates the cost will be between \$5.5 million and \$8.5 million per "database owner." Ameritech at 1. TIA assumes that Ameritech is referring to the regional service control points ("SCPs") referenced in Attachment A of its Petition. Accepting U.S. West's estimate of "a dozen or so" SCPs, (U.S. West at 6), TIA has multiplied Ameritech's estimate by twelve to arrive at a national cost estimate of \$66 to \$102 million. For purposes of computation, a mean figure of \$84 million was used.

^{14/} BellSouth states that it recorded 45.5 million minutes of use ("MOU") for 900 service originating in its territory in 1993. BellSouth at 2 n.1. Southwestern Bell estimates that it will provide 30 million MOU for 900 service in its territory in 1994. Southwestern Bell at 2 (2.5 million x 12 months = 30 million per year). Since these are the only two parties providing concrete MOU figures, TIA has used the mean of these numbers.

minutes per year.^{15/} If the RBOCs amortize these costs over a six year period,^{16/} the cost of implementing 900 portability could be recovered at a rate of 4.6¢ per minute.^{17/}

Based upon these figures, not only may 900 demand be sufficient to allow recovery of the costs associated with implementing portability within six years, but considering the average price differential between 800 and 900 service,^{18/} demand may be sufficient to produce a net reduction in the average rates charged for 900 transport.^{19/} That is, even accepting the figures

^{15/} This estimate is characterized as conservative because it is based on the average MOU of two RBOCs multiplied by eight. Since the seven RBOCs and GTE are generally believed to account for approximately 80% of the total telecommunications traffic in the United States, a more accurate estimate may be obtained by multiplying the average MOU by ten.

^{16/} This amortization period assumes that 900 portability could be implemented in 1998. It further assumes the optimistic forecast that all end offices nationwide will be capable of providing number portability via an Advanced Intelligent Network ("AIN") solution within a decade, making the equipment necessary for 900 portability obsolete. Although BellSouth claims that all of its end offices either will be AIN-equipped or have access to an AIN-equipped tandem by 1998 (BellSouth at 3), and U.S. West claims that half its access lines will be AIN-compatible by the end of next year (U.S. West at 5), it is unlikely that all LECs nationwide will have AIN capability sooner than ten years from now. See discussion infra part C.

^{17/} If the investment recovery period were extended to eight years the cost per minute would drop to 3.5¢; only 2.8¢ per minute would be required if the RBOCs amortized their costs over ten years.

^{18/} See TIA Petition at 7.

^{19/} The rates for 900 transport are, on average, 6.37¢ per minute higher than 800 rates. This figure is calculated by subtracting the average rate for 800 service cited at page 7 in TIA's Petition from the average rate for 900 service. Assuming this difference is the result of competition in the 800 transport
(continued...)

submitted in this proceeding, subscriber benefits resulting from portability still would outweigh the costs of implementation, notwithstanding assertions to the contrary.^{20/}

C. Unreasonable Delay In Implementing 900 Portability Should Be Avoided.

While expressing support for TIA's Petition, some parties have argued that the Commission should alter or expand the scope of this rulemaking proceeding to consider other matters concurrently with 900 portability. Some have suggested, for instance, that AIN technology would be a more appropriate means for implementing portability, and that the Commission should refer such issues to industry fora.^{21/} TIA does not oppose the use of AIN technology for this purpose, but AIN is not a short term solution to the portability problem. AIN will serve as a substitute for a nationwide database only when all end offices are equipped with

^{19/} (...continued)
market and a lack thereof in the 900 market, portability could push 900 rates down an additional 1.8¢ per minute even after netting out 4.6¢ per minute for recovery of initial investment.

^{20/} The above example is not intended to be definitive or comprehensive. Rather, it simply is intended to illustrate, by using the only data in the record, that a formal rulemaking proceeding is required to determine the fiscal soundness of implementing 900 number portability. Although this example assumes static demand, it is reasonable to believe that 900 demand will increase as a result of portability, and that increased demand will further stimulate competition in an upward spiraling fashion. See supra discussion concerning demand for 900 services.

^{21/} See BellSouth at 3; Pacific Bell at 4; Southwestern Bell at 2-3; U.S. West at 4-5.

AIN. It does not appear that such a nationwide response will occur for at least a decade, if not longer.

Others have suggested that the rulemaking proceeding sought by TIA should not be limited to 900 service access codes, but should be used to consider portability for all service access codes, as well as for other services.^{22/} TIA does not oppose the Commission studying ways to expedite provision of portability for other communication services, but the Commission should not unnecessarily delay 900 portability in the interest of providing portability for other services. The issues to be considered when developing portability for different services may vary substantially by service. The provision of 900 portability, however, is closely analogous to 800 portability, and may need to be considered separately from other services. If that is the case, consolidating consideration of 900 portability with that for other services would be inefficient and would result only in unnecessary delay.

III. CONCLUSION

To fulfill the Commission's objective of serving the best interests of the public, TIA submits that the Commission should issue a Notice of Proposed Rulemaking proposing to adopt rules and regulatory policies that will require 900 number portability in the near future.

^{22/} See Sprint at 2; U.S. West at 12-13.

Respectfully submitted,

THE TELESERVICES INDUSTRY ASSOCIATION

By: _____

A handwritten signature in dark ink, appearing to be 'Edwin N. Lavergne', written over a horizontal line.

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Dated: December 12, 1994

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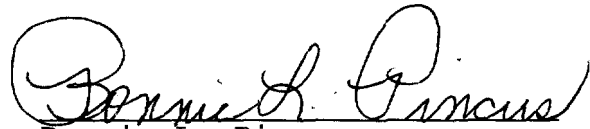
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